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PPG Industries Inc
One PPG Place
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OFFICE OF PETITIONS

In re Application of :
Novich et al. :
Application No. 09/620,526 :
Filed: July 20, 2000 :
Attorney Docket No. 03626.0034-1400 :

ON PETITION

This is a decision on the petition filed April 2, 2004, under 37 CFR 1.137(a) to revive the above-identified application, which is initially being treated as a petition to withdraw the holding of abandonment.

The application became abandoned on November 28, 2000, for failure to timely reply to the Notice to File Missing Parts of Nonprovisional Application mailed on September 27, 2000, which set a two (2) month shortened statutory period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. A Notice of Abandonment was mailed on February 5, 2004.

Petitioners assert that the Notice to File Missing Parts mailed on September 27, 2000, was never received. A review of the record indicates no irregularity in the mailing of the Office action, and in the absence of any irregularity in the mailing, there is a strong presumption that the Office action was properly mailed to the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish the failure to receive an Office action must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached

to and referenced in practitioner's statement.¹ The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail (e.g. if the practitioner has a history of not receiving Office actions).

In support of petitioners' assertions of nonreceipt of the Notice to File Missing Parts, Mark D. Sweet, a practitioner, explained that upon the absence of communication following the receipt on December 1, 2000, of a Filing Receipt dated October 20, 2000, petitioners filed a status inquiry on January 22, 2001. Mr. Sweet stated that petitioners did not receive any further communications from the United States Patent and Trademark Office until the Notice of Abandonment was received on February 5, 2004. Additionally, petitioners submitted a statement from Rosemarie Grech, the docket clerk, setting forth the procedure of docketing communications from the USPTO, as well as descriptions of the events regarding the nonreceipt of the Notice to File Missing Parts. Ms. Grech included a copy of the docket records, which reflected where the Notice to File Missing Parts would have been entered had it been received.

Based on the facts as set forth in the petition, the holding of the abandonment is **withdrawn**. Accordingly, no petition fee is required. The \$110.00 petition fee will be refunded to Deposit Account No. 06-0916. The Office acknowledges receipt of the Declaration.

The application file is being forwarded to Technology Center 1700.

Telephone inquiries should be directed to the undersigned at (703) 306-5589.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

¹M.P.E.P. § 711.03(c); See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).